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July 20, 2005

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

**Hearing Officer's Decision**

Name of Case: Personnel Security Hearing

Date of Filing: March 11, 2005

Case Number: TSO-0199

This decision concerns the eligibility of XXXX XXX (hereinafter referred to as "the Individual") to have his access authorization restored under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1</sup>

**I. BACKGROUND**

The present case concerns an individual, now employed by a sub-contractor to a DOE contractor, who seeks reinstatement of his DOE access authorization. The Individual's access authorization was suspended when derogatory information which raised a significant doubt about his eligibility to maintain his access authorization came to the attention of a DOE Local Security Office (LSO). This derogatory information was obtained by the LSO during a background re-investigation of the Individual. As part of this re-investigation, the Individual was required to complete and submit a Questionnaire for National Security Position (QNSP). The Individual submitted this QNSP in February 2000. On September 28, 2000, the Individual was interviewed by an Investigator (the Investigator) as part of the background investigation. On May 31, 2001, and on March 7, 2002, the Individual was interviewed by LSO officials.<sup>2</sup> On June 24, 2004, a personnel security interview (PSI) of the Individual was conducted as part of the background investigation.<sup>3</sup>

The LSO concluded that the Individual failed to resolve the substantial doubts about his eligibility for a DOE access authorization raised by the derogatory information revealed during the background investigation. Accordingly, an administrative review proceeding was initiated. See 10 C.F.R. § 710.9. The LSO then issued a letter notifying the Individual that it possessed information that raised a substantial doubt concerning his eligibility for access authorization (the

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<sup>1</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to in this Decision as an access authorization or a security clearance.

<sup>2</sup> The LSO did not submit transcripts of these interviews.

<sup>3</sup> The transcript of this PSI appears in the Record as DOE Exhibit 7.

Notification Letter). The Notification Letter alleges that the Individual has

(1) Deliberately misrepresented, falsified, or omitted significant information from a . . . Questionnaire for Sensitive (or National Security) Positions, . . . a personnel security interview, written or oral statements made in response to official inquiry on a matter that is relevant to a determination regarding eligibility for DOE access authorization, or proceedings conducted pursuant to Sec. 710.20 through Sec. 710.31," 10 C.F.R. § 710.8(f) (Criterion F), [and]

(2) Engaged in any unusual conduct or is subject to any circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause the individual to act contrary to the best interests of the national security . . ." 10 C.F.R. § 710.8(l) (Criterion L).

The Individual filed a request for a hearing in which he made a general denial of the allegations contained in the Notification Letter. This request was forwarded to the Director of the Office of Hearings and Appeals (OHA), who appointed me as Hearing Officer.

At the Hearing, the LSO presented no witnesses. The Individual testified on his own behalf, but did not present any witnesses. *See* Transcript of Hearing, Case No. TSO-0199 (hereinafter cited as "Tr.").

## II. STANDARD OF REVIEW

The Hearing Officer's role in this proceeding is to evaluate the evidence presented by the agency and the Individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). The regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all the relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this opinion: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, including knowledgeable participation; the frequency and recency of the conduct; the Individual's age and maturity at the time of the conduct; the voluntariness of the Individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

### III. FINDINGS OF LAW AND FACT

#### A. Background

On June 30, 1998, the Individual was arrested and charged with aggravated assault. Transcript of PSI at 4 (Hereinafter cited as “PSI”). The police officers who made this arrest apparently alleged that the Individual had pointed a gun at his girlfriend’s head and then threatened to kill her and himself if she broke up with him. *Id.* at 10.

In February 2000, the Individual completed and submitted a QNSP to the LSO. Among the questions included in the QNSP were: (1) “Have you ever been arrested, charged with or convicted of a firearms or explosive offense?” (2) “Have you ever been arrested, charged with, or convicted of a felony offense?” and (3) “In the last seven years have you been arrested, charged with, or convicted of, any offenses not listed above?” PSI at 11. The Individual apparently answered “no” to each of these questions. *Id.*<sup>4</sup>

The Individual filed for bankruptcy in April 2000 and received a discharge in July 2000. Tr. at 15-17. On September 28, 2000, he was interviewed by the Investigator as part of his background investigation. During this interview, the Individual claimed he had never filed for bankruptcy. Tr. at 17; PSI at 76. The Individual also informed the Investigator that he had never been arrested. Tr. at 17; PSI at 12.

On May 31, 2001 and again on March 7, 2002, the Individual was interviewed by LSO Security Officials. During both of these interviews the Individual was asked if he was involved in an extramarital affair with the woman he was accused of threatening. PSI at 15. During both of these interviews, the Individual denied involvement in an affair. *Id.*

During the PSI, the Individual admitted that he falsely informed the Investigator that he had never been arrested or filed for bankruptcy. PSI at 12. The Individual further claimed that his arrest for aggravated assault was not justified since he had not pointed a gun or threatened his girlfriend. PSI at 8-10. Under questioning at this PSI, the Individual initially described his relationship with the woman he was accused of threatening as “his wife’s cousin” and a “general acquaintance for being around.” Tr. at 5-6. Under further questioning, he admitted that he had lied in two previous interviews when he denied having an extramarital affair with the woman he was accused of threatening. Tr. at 6. The Individual also acknowledged that he had omitted his arrest for aggravated assault from the February 2000 QNSP. PSI at 11. The Individual claimed that this omission of information from the QNSP was unintentional. According to the Individual, the omission occurred because his QNSP was prepared by a secretary and then signed by him. The Individual claimed that he signed the QNSP without reading it. PSI at 11.

At the Hearing, the Individual continued to deny that he had pointed a gun at his girlfriend or threatened her. Tr. at 8-13. The Individual also continued to assert that his omission of information from the QNSP occurred because he signed the QNSP without reading it after it had

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<sup>4</sup> The LSO did not submit a copy of the QNSP.

been prepared by a secretary. Tr. at 13-15. The Individual admitted that he had made false statements to the Investigator. Tr. at 18-19.

## **B. Analysis**

The Individual has admitted that he intentionally provided DOE security officials with false information on at least four occasions: when he lied to the Investigator about his bankruptcy filing and his arrest record, and when he lied to the interviewers about his extramarital affair on two separate occasions. In addition, the Individual is accused of intentionally omitting information from a February 2000 QNSP. The Individual claims that this omission was unintentional and that it was made by the secretary who gathered the information for his QNSP and then typed it.<sup>5</sup> The Individual says he signed the QNSP without reading it. Even if this assertion is true, it still raises a serious security concern. Regardless of who prepared the QNSP, the Individual is responsible for ensuring that its contents are accurate. If it is true that the Individual failed to carefully read and check the information in the QNSP before he signed it, the omission of this information resulted from his carelessness and irresponsibility. Such carelessness and irresponsibility on a serious matter like a QNSP would, by themselves, raise serious concerns about the Individual's judgment and reliability.

However, the Individual's explanation of how information concerning his arrest came to be omitted from his QNSP is not convincing. The Individual had previously maintained a DOE access authorization for many years. Tr. at 21. It is therefore difficult to believe the Individual was not aware of the importance of promptly reporting arrests to LSO security officials. More importantly, the Record shows that the Individual subsequently intentionally informed the Investigator that he had never been arrested. These facts evidence a continuing and conscious effort on the part of the Individual to conceal this arrest from LSO security officials.

The incidents discussed above provide a sound basis for the LSO's decision to invoke Criteria F and L. I therefore turn to one other issue that merits discussion. The Record shows that the Individual was arrested for aggravated assault on June 30, 1998. Apparently, a police report alleges that the Individual held a gun to his girlfriend's head and threatened to kill her and his self if she left him. The Individual has consistently claimed that he never aimed a gun at his girlfriend and that he never threatened her. If these allegations in the police report were shown to be true, they would raise grave security concerns, since the actions allegedly described in this police report would show that the Individual's judgment and control of his emotions were seriously impaired. Moreover, if the allegations were shown to be true, they would raise further doubts about the Individual's credibility, since he has repeatedly asserted that he never threatened his girlfriend or pointed a gun at her. However, the LSO failed to submit a copy of the police report into the Record. Nor did the LSO submit any other significant evidence into the Record from which it may be inferred that the Individual threatened his girlfriend or pointed a gun at her. The Record does contain the Transcript of the June 24, 2004 PSI of the Individual, in which the interviewers repeatedly accuse the Individual of threatening his girlfriend and pointing a gun at her. During this PSI, the interviewers repeatedly refer to a police report which allegedly

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<sup>5</sup> Interestingly, the Individual did not call this secretary as a witness.

asserts that the Individual had pointed a gun at his girlfriend's head and threatened to kill her and his self if she broke up with him. However, the statements of these interviewers have little or no evidentiary value in this proceeding. Without the police report, or at least the sworn testimony of a witness with personal knowledge of the police report's contents, I am unable to conclude that the Individual threatened his girlfriend and himself.

Based on the Record before me, I find that the individual deliberately provided DOE with false information on three occasions and deliberately omitted significant information that he was under an obligation to reveal on two other occasions. The basis for the LSO's security concerns is obvious. False statements by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when a security clearance holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See e.g., Personnel Security Hearing Case No. VSO-0281*, 27 ¶ 82,821 at 85,915 (1999), *aff'd*, 27 DOE ¶ 83,030 (2000) (case terminated by OSA, 2000); *Personnel Security Hearing Case No. VSO-0013*, 25 DOE ¶ 82,752 at 85,515 (1995) (affirmed by OSA, 1995).

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing Case No. VSO-0244*, 27 DOE ¶ 82,797 (affirmed by OSA, 1999); *Personnel Security Hearing Case No. VSO-0154*, 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review Case No. VSA-0154*, 27 DOE ¶ 83,008 (affirmed by OSA, 1998). In the end, like all Hearing Officers, I must exercise my common sense judgment in determining whether an individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c). Therefore, I must consider whether the Individual has submitted sufficient evidence of mitigation to resolve the security concerns raised by his omissions and false statements.

The Individual testified that he has learned from his mistakes and will not repeat them. Tr. at 19. His testimony also indicated that he has changed and become a more mature and responsible person, which enabled him to be promoted to a supervisory position at a DOE facility. Tr. at 19, 24. He further testified that he now recognizes the necessity and importance of providing accurate information to DOE security officials. Tr. at 23. The Individual testified that if he were confronted with a situation in which providing accurate information to the DOE could potentially result in the revocation of his access authorization, he would chose to provide accurate information. Tr. at 25. The Individual's testimony appeared to be sincere.

However, I am not convinced that the DOE can rely on the Individual to provide honest and accurate information in the future. On at least five occasions, over a two-year period, the Individual has provided false information to LSO Security Officials. These falsifications establish a strong pattern of unreliability.

In a number of decisions, DOE hearing officers have considered the implications of falsifications. The factors considered in these cases include the following: whether the individual came forward voluntarily to renounce his falsifications; *compare Personnel Security*

*Hearing, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), aff'd (OSA Feb. 22, 1996) (voluntary disclosure by the individual), with Personnel Security Hearing, Case No. VSO-0327 (April 20, 2000), appeal filed (falsification discovered by DOE security); the length of time the falsehood was maintained; whether a pattern of falsification is evident, and the amount of time that has transpired since the individual's admission. See Personnel Security Hearing, Case No. VSO-0327 (April 20, 2000), appeal filed (less than a year of truthfulness insufficient to overcome long history of misstating professional credentials). See also Personnel Security Hearing, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation from falsifying by denying drug use). Personnel Security Hearing, Case No. VSO-0319, 27 DOE ¶ 82,851 (June 14, 2000), aff'd (OSA July 18, 2000).*

Turning to the present case, I note that although the Individual eventually admitted his falsifications and omissions, he did so when asked about them rather than spontaneously revealing them to LSO Security Officials. *Compare Personnel Security Hearing, Case No. VSO-0037, 25 DOE ¶ 82,778 (1995), aff'd (OSA Feb. 22, 1996) (voluntary disclosure by the individual), with Personnel Security Hearing, Case No. VSO-0327, 27 DOE ¶ 82,844 (April 20, 2000) (falsification discovered by DOE security).* The Individual has a six year history of withholding significant information and intentionally providing false information to DOE. The number of occasions on which the Individual intentionally either omitted significant information or provided false information establishes a strong pattern of deliberate falsification and omission. Each of these factors suggests that the security concerns raised by the Individual's omissions and falsifications have not yet been significantly resolved.

At the time of the hearing, only 11 months had elapsed from the date when the Individual finally admitted the truth about his extramarital affair. Our previous cases have stated that a subsequent pattern of responsible behavior is of vital importance to mitigating security concerns arising from irresponsible behavior. *See Personnel Security Hearing, Case No. VSO-0499, 28 DOE ¶ 82,850 (March 15, 2002).* In most cases in which Hearing Officers have concluded that doubts about an individual's judgment and reliability raised by evidence of falsification have been resolved, a substantial period of time has passed since the falsification. In these cases, the time period has allowed individuals to establish a pattern of responsible behavior. In those cases where an individual was unable to establish a sustained period of responsible behavior, Hearing Officers have generally determined that the individual was not eligible to hold an access authorization. *See Personnel Security Hearing, Case No. VSO-0448, 28 DOE ¶ 82,816 (2001) (11 months not sufficient to mitigate four year period of deception); Personnel Security Hearing, Case No. VSO-0327, 27 DOE ¶ 82,844 (April 20, 2000) (less than one year of truthfulness insufficient to overcome long history of misstating professional credentials); Personnel Security Hearing, Case No. VSO-0289, 27 DOE ¶ 82,823 (1999) (19 months since last falsification not sufficient evidence of reformation).* Given the facts of this case, I cannot find that 11 months of responsible behavior is sufficient to mitigate the security concerns associated with a six-year period of deception. Therefore, the security concerns set forth in the Notification Letter under Criteria F and L remain unresolved.

#### **IV. CONCLUSION**

For the reasons set forth above, I conclude that the Individual has not resolved the security concerns raised under Criteria F and L. Therefore, the Individual has not demonstrated that restoring his security clearance would not endanger the common defense and would be clearly consistent with the national interest. Accordingly, it is my opinion that the Individual should not be granted an access authorization. The Individual may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Steven L. Fine  
Hearing Officer  
Office of Hearings and Appeals

Date: July 20, 2005